S.B.Civil Writ Petition NO.816/2005

Ratan Lal

vs

State of Rajasthan & Ors.

DATE OF ORDER : - 14.2.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. Mahesh Thanvi, for the petitioner.

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Heard learned counsel for the petitioner.

According to learned counsel for the petitioner, the petitioner filed a suit under Section 188 and 92A of the Rajasthan Tenancy Act in the court of Asstt. Collector, Phalodi seeking relief of injunction against the respondent against their raising construction over the property in dispute. The suit was filed on 21.2.2004. According to learned counsel for the petitioner, the case remained pending upto 20th Sept., 2004 and, thereafter, plaintiff withdrawn his suit, which was permitted by the court vide order dated 20th Sept., 2004. According to petitioner,the respondents have no right to raise any construction over the property in dispute, but they are raising construction. The petitioner submitted representation to the Commissioner, Colonization, Bikaner, copy of

which is placed on record as Annex.4. The petitioner after withdrawing the suit and after obtaining permission to file fresh suit from the trial court preferred this writ petition seeking the same relief against the construction of pumping station in the alleged field of the petitioner. It appears that in the trial court, the petitioner himself voluntarily submitted an application under Order 23 Rule 1 and 4 CPC. The petitioner stated that respondents are raising construction of the pumping station absolutely illegally and despite the fact that plaintiff-petitioner's suit is pending. It is stated that plaintiff is poor and in the circumstances (at that stage), plaintiff does not want to proceed with the suit, therefore, the plaintiff may be permitted to withdraw the suit with liberty to file fresh suit. The trial court, the Asstt. Collector, Phalodi vide order dated 20th Sept., 2004 allowed the application and granted permission to the petitioner to file fresh suit and allowed the withdrawal of the suit. The petitioner instead of filling any suit in pursuance of order of the trial court dated 20.3.2004, preferred this writ petition for the same relief.

The facts referred above clearly reveal that the trial court did not apply its mind whether the permission could have been granted for filing the fresh suit or not.

Be that as it may, the facts remained is that according to

petitioner himself cause of action if any, was there, it accrues to the petitioner in the month of Feb., 2004. He filed the suit in a competent court of law is not in dispute. The written statement was filed, the case was fixed for framing the issues and at that stage, the plaintiff voluntarily requested the court to dismiss his suit as withdrawn despite the fact that the petitioner's cause of action was surviving and despite the fact that petitioner could have proceeded with the suit. Not only this, but the petitioner, for the reasons best known to him, obtained permission from the revenue court to file fresh suit, but did not file any suit by taking help of the order dated 20th Sept., 2004.

It appears that petitioner himself abandoned his all rights and, thereafter, preferred this writ petition, therefore, writ petition of the petitioner deserves to be dismissed merely on this ground alone.

Hence, the writ petition of the petitioner is dismissed.

(Prakash Tatia), J.

c.p.goyal/-